

IN THE UNITED STATES DISTRICT COURT
 FOR THE NORTHERN DISTRICT OF CALIFORNIA

BRANDON A. PINOLA,

Petitioner,

vs.

STATE OF CALIFORNIA,

Respondent.

No. C 12-06050 EJD (PR)

ORDER TO SHOW CAUSE;
GRANTING MOTION FOR LEAVE
TO PROCEED *IN FORMA PAUPERIS*

(Docket No. 8)

Petitioner, a state prisoner proceeding pro se, filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his state conviction. Petitioner has filed a motion for leave to proceed in forma pauperis. (Docket No. 8.)

BACKGROUND

According to the petition, Petitioner was found guilty of first degree murder after a jury trial in Mendocino County. (Pet. at 1, 8.) Petitioner was sentenced to 25 years to life in state prison. (Id. at 1.)

Petitioner appealed his conviction, and the state appellate court affirmed. (Id. at 2.) The state high court denied review. (Id.)

Petitioner filed the instant federal habeas petition on November 8, 2012.

DISCUSSION**A. Standard of Review**

This court may entertain a petition for a writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a).

It shall “award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto.” Id. § 2243.

B. Legal Claims

Petitioner claims the following ground for federal habeas relief: (1) the trial court erred by instructing the jury that his testimony required supporting evidence; (2) the trial court erred in admitting evidence that Petitioner kicked a man in 2008; (3) the trial court erred by instructing the jury that Petitioner could be found guilty as an aider and abettor; and (4) cumulative error. Liberally construed, his claims are cognizable under § 2254 and merit an answer from Respondent.

CONCLUSION

For the foregoing reasons and for good cause shown,

1. Petitioner’s motion for leave to proceed in forma pauperis, (Docket No. 8), is GRANTED.

2. The Clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on Respondent and Respondent’s attorney, the Attorney General of the State of California. The Clerk also shall serve a copy of this order on Petitioner.

3. Respondent shall file with the court and serve on petitioner, within **sixty (60) days** of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be issued. Respondent shall file with the answer and serve on

1 Petitioner a copy of all portions of the state trial record that have been transcribed
2 previously and that are relevant to a determination of the issues presented by the
3 petition.


4 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse
5 with the Court and serving it on Respondent within **thirty (30) days** of his receipt of
6 the answer.

7 4. Respondent may file a motion to dismiss on procedural grounds in lieu of
8 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules
9 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file
10 with the Court and serve on Respondent an opposition or statement of non-opposition
11 within **thirty (30) days** of receipt of the motion, and Respondent shall file with the
12 court and serve on Petitioner a reply within **fifteen (15) days** of receipt of any
13 opposition.

14 5. Petitioner is reminded that all communications with the court must be
15 served on Respondent by mailing a true copy of the document to Respondent's
16 counsel. Petitioner must also keep the Court and all parties informed of any change
17 of address.

18 This order terminates Docket No. 8.

19 DATED: 1/28/2013


EDWARD J. DAVILA
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE
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BRANDON A. PINOLA,

Petitioner,

vs.

Case Number CV 12-06050 EJD (PR)

CERTIFICATE OF SERVICE

STATE OF CALIFORNIA,

Respondent.

_____/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/29/2013, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) inter-office delivery receptacle located in the Clerk's office.

Brandon A. Pinola
AD-2296
Pleasant Valley SP
P.O. Box 8500
Coalinga, CA 93210

DATED: 1/29/2013

Richard W. Wieking, Clerk
/s/By: Elizabeth Garcia, Deputy Clerk